

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 773

Environmental Control

SPONSOR(S): Full Appropriations Council on Education & Economic Development, Economic Development Policy Committee, Kreegel

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1126

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	13 Y, 0 N, As CS	Wintering	Kruse
2)	Full Appropriations Council on Education & Economic Development	17 Y, 0 N, As CS	Fennell	Kramer
3)	Economic Development Policy Committee			
4)				
5)				

SUMMARY ANALYSIS

Section 403.973, F.S., relating to expedited permitting, was established to encourage and facilitate growth in economic development projects which offer job creation, high wages, which strengthen and diversify the state's economy, and reflect consideration of the state's environment. The goal was to streamline the various agency permit processes, coordinated by the Office of Tourism, Trade and Economic Development. (OTTED).

CS/CS/HB 773 amends s. 403.973, F.S., to transfer the responsibility for certifying eligible projects for expedited permitting for economic development projects that create high-wage jobs from OTTED to the Secretary of the Department of Environmental Protection (DEP). The responsibility to conduct economic assessments for projects and comprehensive plan amendments submitted for expedited permit review remains with OTTED. It reduces by half the number of jobs a business must create before qualifying for expedited permit or comprehensive plan amendments review. The bill also provides that projects that result in the cultivation of biofuels on lands 1,000 acres or larger, construction of a biofuel or biodiesel processing facility and power generating facilities using renewable fuel sources are eligible for expedited permit review.

Under the changes made by the bill to the expedited review process, appeals related to approvals for a project shall occur through a summary hearing and are consolidated with the challenge of any applicable state agency actions. Further, the bill requires that recommended orders issued by an administrative law judge for challenges to state agency action in the expedited permit process must inform the parties of the right to file exceptions to the recommended order and to file responses in accordance with the uniform rules of procedure pursuant to s. 120.54, F.S.

CS/CS/HB 773 also amends s. 220.1845, F.S., and s. 376.30781, F.S. to specify that eligible environmental costs incurred in a given calendar year may be claimed for state corporate income tax credits under the VCTC program, provided that the VCTC application is submitted to DEP by January 31st of the year following the cleanup activities. Additionally, the bill revises s. 376.85, F.S., to provide an annual deadline of August 1st for DEP's issuance of its yearly Brownfield Program report and clarifies the report recipients to be the President of the Senate and the Speaker of the House of Representatives.

CS/HB 773 may have an insignificant negative fiscal impact on the agencies involved that can be absorbed within existing resources.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Expedited Permitting

Section 403.973, F.S., was established to encourage and facilitate growth in economic development projects which offer job creation, high wages, which strengthen and diversify the state's economy, and reflect consideration of the state's environment. The Governor, through the Office of Tourism, Trade, and Economic Development, (OTTED) is vested with creating regional permit action teams which serve to expedite review of permit applications and local comprehensive plan amendments submitted.¹

Section 403.973, F.S., authorizes OTTED or a Quick Permitting County² to certify certain business permits as eligible for expedited review. OTTED is also responsible for reviewing comprehensive plan amendments for projects that strengthen and diversify the State's economy. Recommendations for eligible projects come from Enterprise Florida, Inc., any county or city, or the Rural Economic Development Initiative (REDI). Eligibility criteria require that the business create at least 100 jobs, or, if located within specified areas such as an enterprise zone, 50 jobs.

The local government must notice and hold a public hearing to execute a memorandum of agreement for each qualified project. The memorandum of agreement that a local government signs must include a provision identifying necessary local government procedures and time limits that will be modified to allow for the local government decision on the project within 90 days. The memorandum of agreement applies to projects, on a case-by-case basis, that qualify. Each memorandum of agreement must include a process for final agency action on permit applications and local comprehensive plan amendment approvals within 90 days after receipt of a completed application, unless the applicant agrees to a longer time period or the office determines that unforeseen or uncontrollable circumstances preclude final agency action within the 90-day timeframe or unless federal law conflicts. The memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately by the parties to the memorandum of agreement to be combined into one proceeding or held jointly and at one location and must include guidelines to be used in working with state, regional, and local permitting authorities.³

¹ Section 403.973, F.S.

² A Quick Permitting County is a county certified under s. 288.1093, F.S., and eligible for a grant under s. 288.1092, F.S.

³ Section 403.973, F.S.

Section 403.973, F.S., vests OTTED with agency collaboration to create the memoranda of agreement, and must review sites proposed for the location of facilities eligible for the Innovation Incentive Program. Within 20 days after the request for OTTED to do a site review, the agencies must give OTTED a statement of each site's necessary permits under local, state, and federal law and an identification of significant permitting issues. OTTED must certify a business' eligibility for undergoing expedited review. Enterprise Florida, Inc., a county or municipal government, or REDI may recommend to OTTED that a project meeting the minimum job creation threshold undergo expedited review.⁴

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order.⁵

Benefits for certified projects include identification of all permits and approvals needed, designation of a project coordinator and regional permit action team contacts, final agency action on permit applications within 90 days of receipt of complete application, waiver of the twice-a-year limitation on comprehensive plan amendments, and waiver of interstate highway concurrency with approved mitigation.⁶

According to data and interviews conducted on expedited permitting, the expedited permitting procedure in s. 403.973, F.S., is and has been infrequently used since its creation in 1996. Discussions with the Governor's office, agency staff, and business and advocacy groups has shown that the process is perceived as more of a burden than an expedited process. Without significant changes, this statute is likely to remain underutilized.

The expedited process in s. 403.973, F.S., in current practice, is described below:

1. Applicant contacts OTTED, learns parameters of process, and decides whether to proceed.
2. If applicant decides to proceed, completes application and submits 15 copies to OTTED.
3. OTTED reviews for job impacts, local support, and other significant impacts.
4. If OTTED approves, pre-permit application meeting set up in local community with regional action teams. The regional action teams are established by the heads of the DEP, the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, voluntarily participating municipalities and counties, and other local governments and federal agencies through execution of memoranda of understanding between their respective agencies or governments.
5. Applicant must be ready to proceed with project, meaning no longer in a design phase.
6. At pre-permit application meeting, a timeline is created by the agencies on how to proceed with the various permits and which agency will need certain information at certain times so it may proceed. Applicant is supposed to leave the meeting with a clear understanding of what is required if a permit is to move forward.
7. Following meeting, the agency has 30 days to respond as to whether it has the intent to permit or not. Once the intent to permit is made known, applicant provides permit information to each agency. 90 day timeframe for agency response to permit application begins. Some cost advantages of the pre-permit meeting are that an applicant will know what is required by all the agencies at one time and so may be able to use one survey with all the information required by those agencies instead of completing multiple surveys. The agency will be able to extract what it needs from the one survey. Agency may still request information which can reset permit timelines.

⁴ Section 403.973, F.S.

⁵ Section 403.973, F.S.

⁶ Section 403.973, F.S.

8. Formal process does not necessarily speed up permitting but may mean the permit is moved ahead of others. Additionally the applicant may receive better contact with the agency since it is in the expedited process. Once permits are issued, applicant can begin project.⁷

Voluntary cleanup tax credit

The Voluntary Cleanup Tax Credits (VCTC) is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and for site rehabilitation and solid waste removal conducted at brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Voluntary Cleanup Agreement or a Brownfield Site Rehabilitation Agreement (BSRA) with the DEP.

The VCTC can apply toward corporate income taxes. The amount of the credit is 50 percent, up to \$500,000 once per site, for solid waste removal, of the costs of the voluntary cleanup activity that is integral to site rehabilitation. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. The total amount of the tax credit that may be granted each year under the program is \$2 million.

Effect of Proposed Changes

CS/CS/HB 773 amends s. 403.973, F.S., to transfer the responsibility for certifying eligible projects for expedited permitting for economic development projects that create high-wage jobs from the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor to the Secretary of the Department of Environmental Protection (DEP). The responsibility to conduct economic assessments for projects and comprehensive plan amendments submitted for expedited permit review remains with OTTED. It reduces the requisite number of jobs a business must create from 100 to 50 or from 50 to 25 in enterprise zones or if the project satisfies other population criteria.⁸ The applicant and the Secretary of the DEP develop the memorandum of agreement with input solicited from the respective heads of agencies and participating government entities.

Projects that result in the cultivation of biofuels on lands 1,000 acres or larger, construction of a biofuel or biodiesel processing facility and power generating facilities using renewable fuel sources would become eligible for expedited permit review. "Renewable energy" is defined as in s. 366.91(2), F.S., to mean electrical energy produced from one or more of the following energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.

Appeals of local government comprehensive plan approvals shall occur through a summary hearing which is consolidated with the challenge of any applicable state agency actions. Challenges to state agency action in the expedited permitting process are subject to a summary hearing, except that the administrative law judge's decision is issued in the form of a recommended order, and therefore, does not constitute the final action of the state agency. The administrative law judge's recommended order which is subject to a summary hearing appeal must inform the parties of their right to file exceptions and responses to the recommended order pursuant to s. 120.54, F.S. In proceedings where the action of one state agency is challenged, the agency must issue a final order within 10 working days of receipt of the recommended order. However, in proceedings where the actions of more than one state agency

⁷ Average time for expedited process, according to OTTED, is 6 to 9 months. OTTED uses a "formal" (statutory) and "informal" process. Informal process used for rural communities when OTTED believes a project is significant to a community, such as through job creation or high wages. Projects have been assisted in the Northwest Florida RACEC, North Central RACEC, the South Central RACEC, and several rural counties. Informal process begins when local government makes a request for the process. At OTTED's discretion, if OTTED believes project is significant, OTTED requests all available information on project; no formal application needed. OTTED provides information to agencies. OTTED pulls together necessary agencies for a meeting in the community, eliminates memorandum of agreement process. Process appears to move rapidly. REDI also may set up funding resource meeting as well to help applicant identify potential funding resources, pulling agencies together including Federal agencies.

⁸ If the county has a population of less than 75,000, or less than 125,000 and is contiguous to a county with a population of less than 75,000.

are challenged, the Governor must issue a final order within 10 working days of receipt of the administrative law judge's recommended order.

The bill requires that recommended orders issued by an administrative law judge for challenges to state agency action in the expedited permit process must inform the parties of the right to file exceptions to the recommended order and to file responses in accordance with the uniform rules of procedure pursuant to s. 120.54. Additionally, the bill provides that for cases where the action of more than one agency of the state are challenged, the Governor shall issue the final order in 45 days, except for the issuance of department licenses required under any federally delegated or approved permit program for which the department must enter the final order.

The bill amends s. 220.1845, F.S., and s. 376.30781, F.S. to specify that eligible environmental costs incurred in a given calendar year may be claimed for state corporate income tax credits under the VCTC program, provided that the VCTC application is submitted to DEP by January 31st of the year following the cleanup activities. Additionally, the bill revises s. 376.85, F.S., to provide an annual deadline of August 1st for DEP's issuance of its yearly Brownfield Program report and clarifies the report recipients to be the President of the Senate and the Speaker of the House of Representatives.

The bill provides that the bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.1845, F.S., specifying applicable due dates.

Section 2: Amends s. 376.30781, F.S., specifying applicable due dates.

Section 4: Amends s. 376.85, F.S., revising an annual report due date and clarifying the report recipients.

Section 5: Amends 403.973, F.S., to transfer some responsibilities from the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Secretary of the Department of Environmental Protection. Reduces by half the number of jobs a business must create before qualifying for expedited permit or comprehensive plan amendments review. Provides that projects creating renewable energy facilities are eligible for expedited permitting review. Consolidates and clarifies the appeals process for final orders regarding expedited permitting applications.

Section 5: Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be an insignificant additional costs for the agencies involved that can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing OTTED from the environmental aspects of the expedited permit review chain may lead to streamlining of expedited permit and comprehensive plan amendment reviews by the DEP. Additionally, the job creation requirement for expedited permit review was reduced by half so more projects and comprehensive plan amendments will qualify. The economic benefits to businesses from this bill may be significant, but are indeterminate.

Projects creating, processing or using biofuels to create renewable energy will be eligible for expedited permit review. Biofuel research and production is a quickly expanding field. Expediting such permits will benefit companies involved in biofuels; however, the economic benefit is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Provides that the Office for Tourism, Trade, and Economic Development remains responsible for conducting economic assessments for projects and comprehensive plan amendments.
- Directs the secretary of the Department of Environmental Protection to create regional permit action teams for counties having a population of less than 75,000, or less than 125,000 and is contiguous to a county with a population of less than 75,000, which matches with population changes made to the definition of rural community revised in the 2009 session.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.

On April 18, 2010, the Full Appropriations Council on Education and Economic Development reported the bill favorably as a Council Substitute with one amendment that specifies applications for the VCTC tax credits are due by January 31st and an annual report by the Department of Environmental Protection is due by August 1st of each year.